

3066.

APPROVAL, NOTES OF EMPIRE VILLAGE SCHOOL DISTRICT, JEFFERSON COUNTY, OHIO—\$7,816.00.

COLUMBUS, OHIO, August 21, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3067.

COUNTY—MAY COLLECT FROM ESTATE OF INMATE FOR MONEY PAID TO STATE FOR CLOTHING FOR INMATE OF OHIO HOSPITAL FOR EPILEPTICS.

SYLLABUS:

1. *A county which has paid the state for the clothing furnished an inmate at the Ohio Hospital for Epileptics, committed from that county pursuant to section 1816, General Code, can be reimbursed for the amount expended from the estate of the inmate. The county auditor, after the claim has been paid by the county upon the order of the county commissioners, is by virtue of section 1816, General Code, required to collect the amount paid, in the name of the state from the estate of the inmate.*

2. *In an action brought by the county by virtue of section 1816, General Code, against the estate of a ward at the Ohio Hospital for Epileptics for clothing and other incidentals furnished the inmate and for which the county has already paid the state, the county is the real party in interest, and the statute of limitations runs against the county in bringing the action. The liability being a liability created by statute is governed by section 11222, General Code. The cause of action in favor of the county against the estate of the ward accrues on the date payment is made to the state and the county is limited to six years from the date of payment in bringing the action.*

COLUMBUS, OHIO, August 21, 1934.

HON. JOSEPH J. LABADIE, *Prosecuting Attorney, Ottawa, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

"I would like your opinion in the following matter: An adult person, whose residence was in Putnam County, Ohio, after a proper hearing before the Probate Court, was committed to the Ohio Hospital for Epileptics. Putnam County paid for clothing furnished this man upon proper invoices sent by said hospital from January 1st, 1918, to January 1st, 1932, the amount paid being \$133.79. No bills have been sent to this county since said last date.

This man's mother died on February 3, 1933, leaving as her only heir, this epileptic person above mentioned. Consequently this man in-

herited sixty acres of land, free of all encumbrances, situated in this county. Up to the time of his mother's death, this man owned no property and was not financially responsible for said clothing furnished him while in said institution but his financial responsibility began with the inheritance from his mother. A guardian has been appointed for him since he is an incompetent, and Putnam County has presented a bill to said guardian for payment of money actually expended by the county in his behalf. Please advise me whether or not the entire bill must be paid by the guardian out of the property belonging to this epileptic by virtue of Sections 1815 to 1817 and 2035 to 2052. Would the county be limited by the statutes of limitation on such action or would the guardian of this man be required to pay the full amount?"

The Ohio Hospital for Epileptics as provided for by sections 2035, et seq., General Code, being one of the benevolent institutions of the state, is governed by all the general provisions of law relating to the organization, management and control of benevolent institutions.

Section 1815-2, General Code, provides for the support of inmates at the various benevolent institutions of the state and reads as follows:

"The maximum rate for the support of inmates of such institutions shall be five dollars and fifty cents per week. Less amounts may be accepted by the board when conditions warrant such action, or when offered by persons not liable."

The law requiring those patients at the various state institutions who were financially able to pay for their support or who had relatives liable for their support was upheld as constitutional in the case of *Rice, Gdn., vs. The State of Ohio*, 14 O. App. 9. The second branch of the syllabus reads:

"The general assembly had full power and authority to enact what is known as the 'pay-patient' law, applying to institutions for the care of the insane, and its enactment was purely a matter of public policy and peculiarly within the domain of the legislative branch of the government."

Section 1815-1, General Code, expressly refers to commitments to the Ohio Hospital for Epileptics and requires the judges of the Court committing the person to the institution to certify to the superintendent of the institution the name and address of the guardian, if one has been appointed, and the name of the relative or relatives liable for such person's support under section 1815-9, General Code.

Section 1815-9 specifies who is liable for the support of inmates at the various institutions and reads:

"It is the intent of this act that a husband may be held liable for the support of a wife while an inmate of any of said institutions, a wife for a husband, a father or mother for a son or daughter, and a son or daughter, or both, for a father or mother."

Clearly under the above section the mother of this inmate would have been responsible for his support in the institution unless it was found that she was not financially able to pay for the same. You do not state, and I therefore assume

that there was no such finding as provided for in section 1815-4, General Code.

Section 1816, General Code, provides for the collection from the county of the incidental expenses and the cost of the necessary clothing for the inmate committed from that county by the state. Said section reads:

"In case of failure to pay incidental expenses, or furnish necessary clothing, the steward or other financial officer of the institution may pay such expenses, and furnish the requisite clothing, and pay therefor from the appropriation for the current expenses of the institution, keeping and reporting a separate account thereof. The account so drawn, signed by such officer, countersigned by the superintendent shall be forwarded by such officer to the auditor of the county, from which the person came; and such auditor shall issue his warrant, payable to the treasurer of state for the amount of such bill and charge the amount to the current expense fund. The county auditor shall then collect the account in the name of the state as other debts are collected."

It is apparent from your inquiry that the claim for clothing furnished the inmate was charged to Putnam County pursuant to this section and not a claim for support of the inmate as provided in section 1815-14, General Code. Section 1816, General Code, supra, provides that after the claim has been paid by the county, upon the order of the county commissioners, the county auditor shall collect the account in the name of the state as other debts are collected.

It is therefore my opinion, in view of the above provisions of law, that the entire claim for clothing furnished the epileptic ward in the Ohio Hospital for Epileptics paid by Putnam County should be collected out of the estate of the ward now in the hands of the guardian, it being the intent of the legislature, as reflected by the legislative enactments, that all costs incurred by the state in maintaining the various benevolent institutions should be collected from the individual estates of the inmates or relatives responsible for their support.

With reference to the second question raised by your inquiry as to whether or not the statute of limitations runs against the county in an action to recover from the ward, section 1816, General Code, supra, provides that:

"The county auditor shall then collect the account in the name of the state as other debts are collected."

Although the action is brought in the name of the state by the county auditor, the county is the real party in interest because it has already paid the state for the support of the inmate and any amount recovered will go to the county to recoup the county for the amount already paid for the inmate's support. The question then is, does the statute of limitations run against the county.

In Vol. 25, O. Jur. at page 632, it is stated:

"The immunity accorded a state and a municipality from the operation of the statute of limitations does not apply to a county, and such a political subdivision is subject to the operation of the statutes. Thus, an action by a county to recover interest on deposit of its funds is subject to the statute, and is barred in six years."

In the case of *Hartman vs. Hunter, Treas.*, 56 O. S. 175, the Supreme Court held that the exemption from the operation of a statute of limitations is a priv-

ilege of sovereignty and can only be asserted by or on behalf of the sovereign and the statute of limitations runs against an action brought by the county treasurer to enforce the collection of assessments for the construction of a township ditch. The Court said at page 180:

“All attempts to extend the exemption to others than the general and state governments have failed. The terms of the statute except none from its operation and the exemption is a prerogative. Being a privilege of sovereignty, as in England it is the King’s plea, so here it is the plea of the sovereign, to be made by it or in its behalf.”

In the case of *State ex rel. Pros. Atty. vs. The Western German Bank*, 13 O. C. C. (n. s.) 543, it was held that the county was barred by the statute of limitations in an action brought to recover interest on public funds deposited in a bank.

To the same effect was the ruling of the Court in the case of *Pros. At’y. vs. The Ohio National Bank* 7 O. N. P. (n. s.) 43.

Section 11222 General Code, requires that an action based upon a liability created by statute be brought within six years after the cause of action accrues. Clearly the liability sought to be imposed upon the estate of the ward is a statutory liability and the action is limited by the above section.

It is therefore my opinion, in the light of the above authorities, that the statute of limitations runs against the county and the county is limited from recovering the amount from the estate of the ward within six years. The cause of action does not arise until the county pays the state and the statute of limitations begins to run on the county’s cause of action from the date payment is made to the state.

Respectfully,

JOHN W. BRICKER,
Attorney General.

3068.

APPROVAL, BONDS OF TOLEDO CITY SCHOOL DISTRICT, LUCAS COUNTY, OHIO—\$10,000.00.

COLUMBUS, OHIO, August 22, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3069.

APPROVAL, BONDS OF ORANGE VILLAGE SCHOOL DISTRICT, CUYA-HOGA COUNTY, OHIO—\$2,000.00.

COLUMBUS, OHIO, August 22, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.